

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DAVID COE,

Plaintiff,

vs.

CONNIE BISBEE et al.,

Defendants.

3:16-cv-00548-RCJ-VPC

**ORDER**

This is a prisoner civil rights complaint pursuant to 42 U.S.C. § 1983. The Court now screens the Complaint under 28 U.S.C. § 1915A.

**I. FACTS AND PROCEDURAL HISTORY**

Plaintiff David Coe is a prisoner in the custody of the Nevada Department of Corrections. He alleges that the members of the Nevada Parole Board (“the Board”) violated his due process rights by considering erroneous information at his parole revocation hearing, and that they violated his First Amendment rights by retaliating against him.

**II. LEGAL STANDARDS**

District courts must screen cases in which a prisoner seeks redress from a governmental entity or its officers or employees. 28 U.S.C. § 1915A(a). A court must identify any cognizable claims and must dismiss claims that are frivolous, malicious, insufficiently pled, or directed against immune defendants. *See id.* § 1915A(b)(1)–(2). Pleading standards are governed by Rule

1 12(b)(6). *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012). When a court dismisses a  
2 complaint upon screening, the plaintiff should be given leave to amend the complaint with  
3 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the  
4 deficiencies could not be cured by amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th  
5 Cir. 1995).

### 6 **III. ANALYSIS**

7 Parole board members “are entitled to absolute quasi-judicial immunity for decisions to  
8 grant, deny, or revoke parole because these tasks are functionally comparable to tasks performed  
9 by judges.” *Swift v. California*, 384 F.3d 1184, 1189 (9th Cir. 2004) (internal quotation marks  
10 omitted). Also, § 1983 claims based on parole determinations are categorically barred by *Heck*  
11 *v. Humphrey*, 512 U.S. 477 (1994) unless and until the determination is overturned via writ of  
12 habeas corpus. There is a narrow exception: if the only thing a plaintiff seeks is declaratory and  
13 injunctive relief granting him a hearing free from cognizable constitutional infirmity, and not a  
14 favorable decision, i.e., not any relief that will necessarily affect the length of his confinement,  
15 he may (indeed must) bring the claim under § 1983 as opposed to habeas corpus. *See Wilkinson*  
16 *v. Dotson*, 544 U.S. 74, 82 (2005).

17 Plaintiff prays for, *inter alia*, “immediate release - continue on parole.” The Complaint is  
18 therefore barred by *Heck*. Even if it were not, the due process claim would fail, and amendment  
19 would be futile, because there is no cognizable liberty interest in parole in Nevada, so no process  
20 is constitutionally due. *Moor v. Palmer*, 603 F.3d 658, 662 (9th Cir. 2010) (citing *Severance v.*  
21 *Armstrong*, 620 P.2d 369, 370 (Nev. 1980)). As for the First Amendment retaliation claim,  
22 Plaintiff has not identified any protected speech against which Defendants allegedly retaliated.

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1 **IV. AMENDMENT**

2 Plaintiff may amend the First Amendment retaliation claim. Plaintiff is informed that the  
3 amended complaint must be complete in itself, because it supersedes the original complaint. *See*  
4 *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). If Plaintiff does not file an amended complaint  
5 within twenty-eight (28) days, the Court will dismiss without further notice. The Court defers a  
6 decision on the motion to proceed in forma pauperis at this time.

7 **CONCLUSION**

8 IT IS HEREBY ORDERED that the Clerk shall DETACH and FILE the Complaint (ECF  
9 No. 1-1).

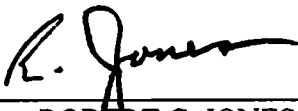
10 IT IS FURTHER ORDERED that Count I is DISMISSED without leave to amend, and  
11 Count II is DISMISSED with leave to amend.

12 IT IS FURTHER ORDERED that the Clerk shall mail Plaintiff a civil rights complaint  
13 form and instructions.

14 IT IS FURTHER ORDERED that Plaintiff shall have twenty-eight (28) days to file an  
15 amended complaint. If Plaintiff does not file an amended complaint, the Court will dismiss  
16 without further notice. Plaintiff shall clearly title the amended complaint as such by writing the  
17 words "FIRST AMENDED" above the words "CIVIL RIGHTS COMPLAINT" on the first  
18 page.

19 IT IS SO ORDERED.

20 Dated this 27th day of July, 2017.

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23 ROBERT C. JONES  
24 United States District Judge